Mailed: May 9, 2005
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

Trademark Trial and Appeal Board

_____

In re Day International, Inc.

_____

Serial No. 76365499

_____

B. Joseph Schaeff of Dinsmore & Sholhl LLP for Day International, Inc.

Mark V. Sparacino, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

_____

Before Hohein, Hairston and Chapman, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Day International, Inc. has filed an application to register the mark ADVANTAGE for "printing blankets."[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to the identified goods, so resembles the mark ADVANTAGE, which is

[1] Serial No. 76365499, filed on January 31, 2002, which is based on an allegation of a bona fide intent to use the mark in commerce.

registered for "printing ink,"[2] as to be likely to cause confusion, or mistake or to deceive.

Applicant has appealed. Briefs have been filed, but no oral hearing was requested. We affirm the refusal to register.

As a preliminary matter, we note that the examining attorney attached to his brief a copy of the Board's decision in In re BASF Drucksysteme GmbH (TTAB February 5, 2003). The Board disregards citation to any non-precedential decision (unless, of course, it is asserted for res judicata, law of the case, or other such issues not involved herein). See General Mills Inc. v. Health Valley Foods, 24 USPQ2d 1270, at n. 9 (TTAB 1992).

We turn then to the issue of likelihood of confusion. Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in Federated Foods, Inc. v. Fort

[2] Registration No. 1,697,277, issued June 30 1992; renewed. Registration also was refused in view of Registration No. 2,151,333 owned by a different entity for the mark ADVANTAGE for "printing presses." The examining attorney, in his appeal brief, withdrew the refusal based on this registration because it was cancelled on December 28, 2004 under the provisions of Section 8 of the Trademark Act.

Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the similarity of the goods and the similarity of the marks.

Turning first to a consideration of the marks, we find that applicant's mark and the cited mark are identical in terms of appearance, sound, connotation and overall commercial impression. This fact weighs in favor of a finding of likelihood of confusion.

We turn next to a consideration of applicant's and registrant's goods. It is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the source of the respective goods. In re Martin's Famous Pasty Shoppe, Inc., 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); In re Melville Corp., 18 USPQ2d 1386 (TTAB 1991); and In re International Telephone & Telegraph

Corp., 197 USPQ 910 (TTAB 1978). Moreover, where the applicant's mark is identical to the cited mark, as it is in this case, there need only be a viable relationship between the respective goods in order to find that a likelihood of confusion exists. In re Concordia International Forwarding Corp., 222 USPQ 355 (TTAB 1983).

Applying these principles to this case, we find that applicant's printing blankets and registrant's printing inks are clearly related. Applicant acknowledges at page 6 of its request for reconsideration that although printing blankets and printing inks are not competitive or similar in nature, they "are related and even complementary goods." Also, at page 9 of its brief, applicant states that "[p]rinting presses use printing blankets to apply printing ink to printing paper." Further, with respect to the channels of trade and purchasers, applicant acknowledges at page 9 of its brief that applicant's and registrant's goods " … are all marketed through similar channels of trade to the same type of consumers." In other words, printing companies would be purchasers of both printing blankets and printing inks.

Applicant argues that marks consisting of the word "advantage" are weak marks and therefore entitled to a limited scope of protection. In support of this argument, applicant submitted copies of ten third-party registrations of ADVANTAGE marks. The probative value of this evidence is very limited in our determination of the specific issue of likelihood of confusion in this case. There is no evidence that the marks are in use or that purchasers are familiar with them. Many of the registrations are for goods far removed from the printing field. The third-party registrations show, at most, that the word "advantage" has some suggestive significance.[3] Nonetheless, the cited mark is still entitled to protection against an identical mark for closely related goods.

Further, the coexistence for six years of the cited registration for ADVANTAGE for printing inks and Registration No. 1,697,277 for ADVANTAGE for printing presses does not compel us to reach a different result. While, under some circumstances, marks have been registered

[3] In this regard, we judicially notice that The American Heritage Dictionary of the English Language (New College Edition 1976) defines "*advantage*" as: "a factor favorable or conducive to success."

which may appear to be likely to cause confusion with each other, such third-party registrations do not justify registration of yet another mark which is likely to cause confusion. AMF Inc. v. American Leisure Products, Inc., 474 F.2d 1403, 177 USPQ 268 (CCPA 1973).

Also, applicant argues that it is the owner of Registration No. 1,442,091 for the mark DAVID M ADVANTAGE for offset lithographic blankets and Application Serial No. 76365498 for the mark DAVID M ADVANTAGE for printer's blankets, not of textile. Applicant contends that the Office determined that there was no likelihood of confusion between the DAVID M ADVANTAGE marks and the cited mark and that there is likewise no likelihood of confusion between applicant's ADVANTAGE mark and the cited mark. However, applicant cannot register a mark which is likely to cause confusion with a previously registered mark merely because it owns a registration for a different mark which includes a common element or because it has filed an application for another mark.

Further, applicant argues that purchasers of printing equipment are sophisticated consumers. While there is no evidence on this point, even assuming such is the case, when the identical mark is used on closely related goods, the relevant purchasers are likely to be confused, despite

the care taken. Also, in the absence of any limitations in applicant's application and the cited registration, we must assume that the respective goods will be sold to all potential purchasers, including sophisticated and not so sophisticated owners and entities in the printing business.

Finally, to the extent that any of applicant's contentions raise a doubt on the issue of likelihood of confusion, such doubt must be resolved in favor of the cited registrant. In re Martin's Famous Pastry Shoppe, Inc., supra.

We conclude, therefore, that purchasers and prospective consumers familiar with registrant's mark ADVANTAGE for printing ink would be likely to believe, upon encountering applicant's identical ADVANTAGE mark for printing blankets, that the respective products emanate from or are associated or sponsored by the same source.

Decision: The refusal to register under Section 2(d) is affirmed.